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WHO IS

THE

"KING OF HUNGARY"

THAT IS NOW

A SUITOR

IN THE

ENGLISH COURT OF CHANCERY?

A LETTER

TO

THE RIGHT HON. LORD J. RUSSELL, M.P.,

HER MAJESTY'S PRINCIPAL SECRETARY OF STATE FOR FOREIGN AFFAIRS.

BY

TOULMIN SMITH,

OF LINCOLN'S INN, ESQUIRE, BARRISTER-AT-LAW.

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LOAN STACK

WHO IS THE "KING OF HUNGARY"?

A LETTER TO LORD JOHN RUSSELL.

My Lord,—

It is remarkable that twice, within the last three months, judgments have been given, in English Courts of Justice, in matters touching the dearest rights of men and of nations; and that, in each case, the judgment has been given in deference to foreign demands, and adversely to the liberties of men and to the freedom of nations.

So soon as the former of these cases, commonly called the "Canada Extradition Case," became known in England, and while it was as yet dogmatically assumed that the judgment could not be gainsaid, I undertook to demonstrate that it was against the Law of England. I did this, by showing that the real points involved in the case had not been so much as touched by the Court, while the judgment given was in direct contravention of fundamental Principles that have always been recognized as of paramount authority in English Law. The correctness of this argument has, since, been admitted by those who did not venture, before, to doubt that the judgment of the Court must be accepted; and, what is more important, the result of the argument has been acted on by Her Majesty's Government.*

* My argument on the subject (dated 5th January) was published in the *Morning Star* of Monday, 7th January. On the very day of its own date, the

Within the past week there has been a judgment given, which involves questions of even greater importance than the Canada Extradition Case. If the judgment given, in the case of the Emperor of Austria against Kossuth, be sound, the crown of Queen Victoria must fall from her head; all the Statutes of the English Parliament for the last 180 years become wiped out, without the aid of the Lord Chancellor's "Statute Law Revision Bill;" and we must search the earth for the heir-at-law of James II., and, having set him on the throne, bow our heads in humble abasement before him.

I undertake, my Lord, to demonstrate that there is not, on the face of the Bill filed by the Emperor of Austria in the Court of Chancery, on Wednesday, 27th February last, even the slightest *primâ facie* colour for granting the Order of Injunction that was actually awarded; but that, on the other hand, the facts alleged in the body of that Bill, and in the single Affidavit by which it was supported, joined with the facts and the principles of Law of which every English Court of Justice is bound to take judicial notice, were such as required the instant dismissal of the Bill by the Court.

Times (5th January) had said, that "the majority of the Court will be thought by Lawyers to have put *the only possible construction* upon the Extradition Law as it stands." On Saturday, the 12th, the *Examiner* discovered that "we have good reason for believing that more than one lawyer of distinction in this country, to whom it had seemed, on first reading Chief Justice Robinson's judgment, that no flaw was to be found in it, have admitted, on mature reflection, that his law is of doubtful correctness." A week later, the *Saturday Review* found it necessary to admit, that "the growing conviction of English Lawyers" was, that the Court was "wrong in Law." Finally, it was candidly admitted by the *Times*, on 11th February, that "the course of legal opinion has entirely changed;" and that, "at this moment [that is, exactly five weeks after my argument had been published], Westminster Hall is almost unanimous to the effect that the Court of Queen's Bench in Canada has given a judgment which cannot be sustained before any Court of Appeal." All this is, of course, very satisfactory to me, and well illustrates what I have so often urged, namely, the vast importance and practical value of taking stand upon *Principles*. The most satisfactory thing, however, has been, that, on the 9th January, the Government sent out orders to Canada that effectually secured the safety of the man claimed under pretence of the Extradition Treaty. See the *Parliamentary Remembrancer* of 9th February, 1861, p. 8.

The propriety of addressing this Letter to your Lordship is obvious. When a foreign Emperor comes into an English Court of Justice, to ask for our Law to interfere with something that is alleged to be doing by one who was solemnly declared, a few years ago, by the lawfully assembled Diet of a Nation of which that Emperor now calls himself "king," to be the lawful Governor of that Nation,—a solemn declaration that remains yet unrevoked by the only power able to revoke it,—the matter is plainly, in fact, a political one; and the thin disguise of invoking the forms of a Court of Law,—or "Equity" if your Lordship pleases,—must not be let draw men's eyes away from the real objects sought, nor from the real questions that are at stake.

To be precise and clear, I will remind your Lordship that the title and first paragraph of the Bill that was filed in Chancery on 27th February, 1861, are as follow:—

> "*Between* Francis Joseph, Emperor of Austria and King of Hungary and Bohemia . . . . . *Plaintiff.*
> William Day, John Day, Joseph Day, and Louis Kossuth . *Defendants.*

"To the Right Honourable John Baron Campbell, of St. Andrews in the County of Fife, Lord High Chancellor of Great Britain;—

"Complaining, Sheweth unto His Lordship, Francis Joseph, Emperor of Austria, and King of Hungary and Bohemia, the above-named Plaintiff, as follows:—

"(1.) The *Plaintiff is the King of Hungary;* and, AS SUCH, *in right of His Crown,* has the *sole and exclusive privilege of authorizing the issue in Hungary of Notes* for payment of money, to be circulated in that Country as money, *and also the sole and exclusive privilege of authorizing to be affixed,* to any document intended to be published or circulated in Hungary, *the Royal Arms of that Country.*"

The other allegations in the Bill are all repeated in the Affidavit of "Rudolph Count Apponyi;" by which alone the Bill

was supported, and upon which alone the Order of Injunction was awarded. That Affidavit is as follows :*—

"I am the ambassador to this country of his Imperial Majesty *the Emperor of Austria*, who is the Plaintiff in this cause. His Imperial Majesty is *also King of Hungary*, and, *as such*, he has, *in right of his crown*, the *sole and exclusive privilege of issuing, and of authorizing the issue, in Hungary, of notes for payment of money* intended to be circulated in that country as money; and also the *sole and exclusive privilege of authorizing to be affixed, to any document intended to be published or circulated in Hungary, the Royal arms of that country.*

"A very large portion, and, to the best of my belief, nearly the whole, of the present circulation in Hungary, consists of notes of the National Bank of Austria, which are issued under the authority of his Imperial Majesty as Emperor of Austria and King of Hungary; and these notes, under the authority of his Imperial Majesty, circulate in Hungary as money, and are for sums of one florin and upwards each.

"I have been informed, and believe, that the defendants, William Day, John Day, and Joseph Day, carry on business in London as lithographers, in partnership, under the firm of Messrs. Day and Sons.

"I have been informed, and believe, that the said Messrs. Day and Sons have prepared plates for printing or lithographing documents which purport to be notes of the Hungarian nation or state, and are designed to be circulated as money in that country; and I have been informed, and believe, that they have done this under the direction of Louis Kossuth, who is one of the above-mentioned Defendants, and that they, by his direction, are now engaged in printing or lithographing, from the plates so prepared by them, documents which purport to be such notes as aforesaid; and which, for the sake of distinction, I hereafter refer to as spurious notes.

"On the 26th of the present month of February, I obtained one of the said spurious notes which had been printed by the said Messrs. Day and Sons. The exhibit marked A, produced and shown to me at the time of my swearing this affidavit, is the spu-

* Some of the passages to which it is necessary to call particular attention, are, for the convenience of the reader, here put in italics.

rious note so obtained by me. *The body of this document is in the Hungarian language, with which I am well acquainted;* and the arms, of which there is a print at the bottom, are the Royal arms of that country. The body of the said note, when translated into English, is as follows :—' One florin. This monetary note will be received in every Hungarian state and public pay-office as one florin in silver—three zwanzigers being one florin; and its whole nominal value is guaranteed by the State. In the name of the nation,—Louis Kossuth.'

" I believe that a great number of the spurious notes which the said Messrs. Day and Sons are manufacturing, are for one florin each, and that the remainder are for other sums, some larger and some smaller than one florin, and that all these spurious notes are numbered, and that, with the necessary variation of the number and the amount which they purport to represent, [they are] the same as the said exhibit A; and I have been informed, and believe, that the total nominal amount of the spurious notes which the said Messrs. Day and Sons are manufacturing will be very large, and will exceed 100,000,000 florins.

" I have been informed, and believe, that the said Messrs. Day and Sons have nearly completed the manufacture of the said spurious notes, and that they now have in their hands a very large number thereof, entirely or nearly completed; and that they intend very shortly, and (as far as I can ascertain) in the course of the present week, to deliver the same to the said Louis Kossuth; and I believe, and, from the information which I, as such ambassador as aforesaid, have obtained, I have no doubt, that the said Louis Kossuth intends, as soon as he has received the said spurious notes, without any authority from his Imperial Majesty, to send the same to agents employed by him in Hungary; and that he intends, by means of his said agents, to sell some of these spurious notes in Hungary to persons resident there, for whatever sums he can get for the same, and by this and other means to introduce the same into circulation in Hungary; and that he intends to use the remainder of the said spurious notes in Hungary, among other purposes, in violation of the rights and prerogatives of the Plaintiff as King of that country; and I believe, and, from the information which I have received as such ambassador as aforesaid, I have no doubt, that the said Louis Kossuth intends to use the same, amongst other purposes, to promote revolution and dis-

cord in Hungary. I, as ambassador of his Imperial Majesty the Emperor of Austria, know that he has never authorized the manufacture of the said notes which the said Messrs. Day and Sons are manufacturing, or the use thereon of the Royal arms of Hungary, and I believe that *the introduction of the said notes into Hungary will create a spurious circulation there, and by that and other means cause great detriment to the State and to the subjects of his Imperial Majesty.* I believe that the members of the firm of Messrs. Day and Sons, before they prepared the plates for the said spurious notes, were aware of the purpose for which the said Louis Kossuth intended to use the same, and that he was not authorized by his Imperial Majesty to prepare and issue the same, and that the said spurious notes were a violation of the rights of the plaintiff as King of Hungary; but I believe that they intend to deliver the said spurious notes, when completed, to the said Louis Kossuth.

"*I first received information that Messrs. Day and Sons were engaged in manufacturing the said spurious notes, on the 3rd of the present month of February. On receiving the information, I at once applied to her Majesty's Principal Secretary of State for Foreign Affairs,* and *requested that her Majesty's government would interfere and prevent* the manufacture of the said spurious notes; and *on the 23rd of the present month, and not before, I received a reply from the said Secretary of State,* to the effect that her Majesty's government were unable to interfere; and I thereupon at once communicated with the government at Vienna of his Imperial Majesty the Emperor of Austria; and on the 26*th of the present month of February, and not before,* received instructions to use the name of his Imperial Majesty in such proceedings as I might think necessary to institute with reference to the said spurious notes."

Some facts are disclosed, on the face of this extraordinary document, which demand notice before touching on the more important questions that arise.

In the first place, it does not appear what business "Rudolph Count Apponyi" had to make any Affidavit in this cause at all. On his own showing, he is out of Court. He tells us that he is ambassador of the *Emperor of Austria.* But the Plaintiff in this cause rests his claim solely and exclusively upon the allegation that he is "*King of Hungary;*" and "AS SUCH" only, he comes into Court.

The Austrian Ambassador, however, further tells us, that he applied to you, my Lord, on the 3rd day of February, upon the subject of the Notes to which the Bill refers; but that "on the 23rd of the same month, and *not before*, he received a reply," to the effect that you were "unable to interfere." Now this lapse of 20 days, is something that has to be accounted for by your Lordship to the public opinion of England. The application ought to have been answered in an hour. There was not the shadow of a pretext for entertaining the suggestion of the Austrian Ambassador. But you did entertain it. You sent Sir Richard Mayne himself, to try whether he could not frighten those concerned, by the awful dread inspired by his own terrible presence. It occurred to them, which it seems not to have done to your Lordship, that there is such a thing as Law in England, and that the matter to be considered was, not what the rolling thunders of Sir Richard Mayne's voice might threaten, but whether the Law of England had given Sir Richard Mayne, backed by all the influence of a government anxious to do the behests of Austria, the power to carry those threats into execution. Parliament and the Public are entitled to require, at your Lordship's hands, a complete journal of the transactions of these twenty days, and to know why the attempts that were actually made by the Government of England were abandoned, and what were the several answers, written and verbal, given to "Rudolph Count Apponyi" during that time, and what suggestions were made to that personage for his future guidance.

One thing is at present clear. The Emperor of Austria is better served than the Queen of England. It took twenty days for your Lordship to give an answer to a very plain question. The Austrian Minister, on the other hand, received his instructions "on the 26th of February, and not before;" but on the very next day he filed his Bill in Chancery, and backed it up by the long affidavit above quoted.

When a suitor comes into any English Court, there are three things that he is bound to show on the face of his complaint; *first*, that he has himself a right to come forward to

complain; *second*, that he has true evidence to bring, in support of his complaint; *third*, that the grievance alleged is a real one. As the most important questions, in the present case, are involved in the first of these conditions, I will glance, shortly, at the third and the second, before entering, more fully, on the consideration of the first.

It is alleged, on the Plaintiff's behalf, that "the introduction of the said notes into Hungary will create a spurious circulation there; and by that and other means cause great detriment to the State and to the subjects of his Imperial Majesty." These words contain a note-worthy admission. They avow the probability, that notes which have no resemblance whatever to the Austrian notes now in circulation, which are in the Hungarian language (which the Austrian notes are not), and whose only possible claim to credit or respect is that they bear the signature "Kossuth," *are likely to be received and accepted as money by the people of Hungary*. The complainant could hardly utter his own condemnation more emphatically than this.

As to "detriment to the State and to the subjects," I need only say, that the Austrian Government, ten years ago, by an act of lawless violence, confiscated an enormous sum of Notes which were then, under the full sanction and authority of the Law, in circulation in Hungary; that it gave no value for these notes, and has never since acknowledged any claim on their account; and that, therefore, it lies not in the mouth of the Emperor of Austria to suggest "detriment" by the circulation of any notes in the redemption of which, in the face of experience, any of the people of Hungary choose to put any confidence. And you know, my Lord, that "Her Majesty's Government hold that the people in question are themselves the best judges of their own affairs."*

So much for the *third* head: now for the *second*. It is alleged, as the only state of facts upon which the complainant supports his complaint, that "the King of Hungary has, *in right of his crown*, [*a*] the sole and exclusive privilege of issuing,

* Despatch of Lord J. Russell to Sir J. Hudson, dated 27 October, 1860.

and of authorizing the issue, in Hungary, of notes for payment of money, intended to be circulated in that country as money; and also [*b*] the sole and exclusive privilege of authorizing to be affixed to any document, intended to be published or circulated in Hungary, the Royal arms of that country."

I take the liberty to affirm, that the very statement of these, as the only facts in support of the complaint, ought at once to have caused the Bill to be dismissed. The Court was bound to take judicial notice that neither of these statements could possibly be true. Nor, if true, does it lie on an *English* Court of Justice to enforce a foreign law.

An important observation arises here, which must be borne in mind throughout the remainder of what I have to say. An English Court can only take cognizance of a complaint, when the matter of complaint is a wrong *according to English Law*. I have gone fully into this point in my argument on the Canada Extradition Case; and as that argument has had a very wide circulation, and is now admitted to be unanswerable, it is unnecessary to re-discuss this matter here.

We all know that none of the Superior Courts of Law in England can take cognizance of the use of a coat-of-arms. Rudolph Count Apponyi should have gone to Garter King-at-Arms, and not to your Lordship, with such a complaint in the first instance; and when he got your tardy reply, he should have inquired, not for the Lord Chancellor, but when the Duke of Norfolk will hold his first Court. Peradventure, indeed, he had heard that the Lord Chancellor has brought in a "Trade Marks" Bill; and being of opinion, perhaps, that a "King of Hungary" may treat his loving subjects as mere goods and chattels, he supposed that this Bill will apply to the present case. That supposition will be found, however, to have been a fond delusion.

Rudolph Count Apponyi tells us that he is "well acquainted with the Hungarian *language*." It is pity that he is not a little better acquainted with the Hungarian *Law* than he proves himself to be. He must pardon my presumption, as an Englishman, in pretending to know anything about

Hungarian Law: but it is a Law well worth the study of an Englishman; and it will be found, before I have done, that it is rather important to know something about its terms and provisions, though the striking resemblance of its great general principles to those of English Law is one of its most remarkable features.*

It is written, then, among the fundamental Laws of Hungary, that every Hungarian noble has a share in the sacred Crown of Hungary, and that none is above him but the *lawfully crowned King*. Kossuth is a Hungarian noble: he has therefore the full right to put the figure of the Hungarian Crown on any document or anything else that he pleases.†

As to "the Royal Arms of Hungary," I content myself with explicitly denying that any such thing is recognized by the law of Hungary. The Hungarian Arms are a Nationa Emblem, which any Hungarian is as much entitled to use in any manner he likes, to indicate his nationality, as any Englishman is to mount a Union Jack.‡

But the "King of Hungary" claims the "sole and exclusive privilege" of issuing Notes. Happily, this is a claim which can be set aside with the greatest ease, and with abundant illustration.

* In a work which I published twelve years ago, and which had then a wide circulation, the comparison between English and Hungarian Law was illustrated in several of the most interesting branches. See "Parallels between the Constitution and Constitutional History of England and Hungary," 1849. I have since learned that there exists an old Latin work on the same subject, and with nearly the same Title. But I have never seen it.

† The following are from the fundamental laws of Hungary:—"Nobiles per quandam participationem et connexionem immediate prædeclaratam, *membra sacræ Coronæ* esse censentur; nulliusque, præter principis *legitime coronati* subsunt protestati." (Jus Consuetudinarium Regni Hungariæ, Pars I. tit. iv. § 1).

[De quatuor privilegiatis et præcipuis nobilium libertatibus.]

"Secunda libertas est, quod nobiles totius Regni, nullius præterquam principis *legitime coronati* subsint potestati." (*ib.* tit. ix. § 4.)

‡ King Mathias Corvinus, in a letter addressed to the College of Cardinals, in the time of Pope Sixtus IV., used these words:—

"Sua Sanctitas certa esse debet duplicatam illam crucem quæ *Regni nostri* est insigne, *gentem Hungaricam* liberius triplicare velle," etc.;—thus showing that the "arms" are not royal arms of the *King*, but arms of the *Kingdom* of Hungary. See also, paragraph "*secundo*" in note, p. 16.

Such a claim can only rest upon the Prerogative of coinage, which has usually been recognized in civilized countries. But an English Court is bound to take judicial notice of the Law of England on this matter, and of the recognized Law of Nations. The Law of Hungary is entirely in accordance with these.

If your Lordship will take the trouble to refer to the Institutes of Lord Coke, or to any other real authority on such subjects, you will find that the Prerogative of the Crown as to money, extends only to *Coin*, and that this coin is, by the common law, limited to gold and silver. It would be mere pedantry to do more, now, than give a few references on this subject.* The Crown of England can neither make nor issue any money, other than gold and silver coin, without the assent of Parliament.

How stands the Law of Nations on this subject? Your Lordship is familiar with Vattel. Thus speaks that great authority:—"Since the State is surety for the goodness of the money and its currency, the public authority alone has the right of *coining* it. Those who counterfeit it, violate the rights of the sovereign, whether they make it of the same standard and value or not. These are called *coiners*, and their crime is justly considered as one of the greatest. For, *if they coin base money*, they rob both the public and the prince; and if they coin good, they usurp the prerogative of the sovereign. They cannot afford to make good, without there be a profit allowed for making it; and then they rob the State of the profit to which it only belongs. In both cases, they do an injury to the sovereign; for the public credit being surety for the money, the sovereign alone has a right to order its being *coined*. Thus the right of *coining* is placed among the *prerogatives of majesty*. . . . From the principles just laid down, it is easy to conclude, that if one nation counterfeits the money of another, or if it allows and protects the

* See 2nd Inst., pp. 574–579; 3rd Inst., pp. 16–18; 1 Blackstone's Commentaries, pp. 277, 278; also the Statutes 37 Geo. III. c. 126; 43 Geo. III. c. 139; 2 Wm. IV. c. 34, etc.

coiners who presume to do it, it does that nation an injury."*

Both the rule, and the reason for it, are strictly confined to *coin*, and to the attempt to pass a baser metal as if it were the duly authenticated good coin of full value. A mere promise to pay, is, on the face of it, a matter of *credit* only.

The Law of Hungary is exactly in accordance with that of England and with international Law. The King of Hungary has never had any power to issue promises to pay in the name of the Nation. To enable this to be done, an enactment by the Diet is necessary. And it does happen, as a matter of fact, that the only person who, at this moment, has lawful power to issue Notes in the name of the Hungarian nation, is Louis Kossuth, the defendant in this cause. This power was expressly given to him twice: *first*, when he was Minister of Finance under King Ferdinand V.; a *second* time when, on Ferdinand's abdication, he was appointed, by the Diet, to be Governor of Hungary. The Austrian Government not only confiscated *both* these sets of lawfully issued Notes, but *stole and appropriated the silver which was lodged, by Louis Kossuth, to the amount of two millions of florins, in the Bank of Pesth, as a metallic basis for the Note currency thus established by law.*

The Law of England failing to give your Lordship any means of doing a service to the Austrian Government on any of these points, the public waits with impatience to know how "Equity" could be made use of to over-ride the Law?

I come now to the *first* thing that has to be made good by the Complainant on the face of his Complaint;—the first step, which is essential to give him any standing-place at all as Complainant.

Every Court of Law in England is bound to take judicial notice of the notorious facts of History, as well as of the Laws of England. This Complaint sets forth, that the complainant is "King of Hungary," and "*as such*" makes his complaint. The sole and exclusive ground on which he rests his case is, that he is "King of Hungary." Now it is a notorious

* 'Law of Nations,' Book I. ch. x. § 107.

fact of history, that this Emperor of Austria is not King of Hungary, but, in the eye of the Law, a mere Usurper there. Had the Emperor of Austria set up his claim *as Emperor,* and as having, *de facto,* kept Hungary beneath his heel by force for twelve years, there might have been a question raised as to what conventional recognition must be *diplomatically* given to this position. But when the claim is set up in the name of "King of Hungary," and of rights which are only pretended to belong to him "as such," these considerations are put altogether aside by the Plaintiff's own act.

If somebody were to make a complaint in the Court of Chancery, under pretence that he is James III. King of England, and claiming, "as such," certain rights, would Sir James Stuart, with all his natural sympathy for his illustrious namesake, grant an Order of Injunction against Mr. Gladstone,—and this, without the Plaintiff entering into any undertaking as to costs? If he would not, then the course of the Court on the present occasion stands self-condemned.

The History of Hungary is part of the History of Europe. The Crown of Hungary is a matter of *strict settlement,* by the Legislature of the Nation, exactly the same as is that of England. But it does happen that the Law sworn to by every King of Hungary contains the explicit recognition, that the right of electing and crowning a King is *inherent* in the States of the realm themselves, and that it is only by express terms of settlement that the House of Hapsburg has, *under the fulfilment of certain conditions,* any claim to the throne.*

Although in Hungary, as in England, a Settlement of the Crown was determined on, so that open disputes should not arise at every death of the occupant of the Throne, this right to the Crown is only *inchoate* until actual coronation; and this coronation is obliged to take place within six months after

* "Et nonnisi post omnimodum prædicti sexus defectum, *avitam et veterem approbatamque et receptam consuetudinem prærogativamque Statuum et Ordinum in Electione et Coronatione Regum* locum habituram, reservant intelligendam."—(Section 11 of Article II. of the Act of the Diet in and by which alone the present branch of the Hapsburgs was accepted by the States of Hungary, A.D. 1723.) And see next page, paragraph "*quarto*" of note.

the DEATH of the last occupant; and it must be preceded by the formal putting forth of a Diploma, under the hand and the oath of the *heir* himself; in which Diploma the rights and liberties of the Nation, *as a separate and independent nation*, are solemnly re-declared and guaranteed. Without the assent of the States, together with the *lawfully crowned* King, no law can be altered; and a Diet must be held at the least once every three years.

Your Lordship will observe that Hungary is expressly declared to be an *independent* kingdom, *not annexed to any other State*, but having its *own separate Constitution.**

* In order to prevent doubt or question, I here give the originals of some of the recorded Laws of Hungary. But it is necessary to observe that, at every Coronation, these fundamental rights and liberties of the nation were re-declared, and the declaration was enrolled among the records of the Diet. They will be found in the *Corpus Juris Hungarici*. The editions of this work which I have used are those of 1751 and 1822.

"[Successionem fœmineam] per præattactum fœmineum sexum Augustæ Domus eiusdem, prævio modo declaratos hæredes et successores utriusque sexus Archiduces Austriæ, acceptandam ratihabendam et una cum præmissis, æque-modo prævio per Sacratissimam Cæsaream et Regiam Majestatem clementissime confirmatis diplomaticis, aliisque prædeclaratis Statuum et Ordinum Regni, Partiumque, Regnorum et Provinciarum eidem annexarum libertatibus, et prerogativis ad tenorem præcitatorum articulorum, futuris semper temporibus, occasione coronationis observandam determinant. (Sec. 10 of Article II. of Act of Diet, 1723.)

"Fideles Status et Ordines Incliti Regni Hungariæ et Partium annexarum, ultro per suam Majestatem Regiam pro fausta Sui Coronatione ad Diætam convocati, peroptime recordantur, qualiter vigore articulorum 1, 2, et 3, 1723, jus Hæreditariæ Successionis in regno Hungariæ, Partibus, Regnis, et Provinciis eidem annexis, in sexum fœmineum Augustæ Domus Austriacæ translatum fuerit, quodve erga semper occasione cujuslibet inaugurationis ad præscriptum legum suscipiendæ, *præmittendam diplomaticorum articulorum acceptationem, juramentique depositionem*, Eum, quem juxta præstabilitum successionis ordinem, eadem successio respiciet, pro legitimo suo rege et domino habituros et coronaturos se declaraverint. (Preamble to entry of Diploma of Leopold II. on Acts of Diet, 1790.)

"*Secundo*. Sacram *Regni* [not *regis*] Coronam, juxta veterem consuetudinem ipsorum regnicolarum, legesque patrias, *per certas de eorum medio*, unanimiter, sine discrimine religionis, *ad hoc delectas* et deputatas, personas seculares, *in hoc regno* conservabimus.

"*Quarto*. Quod in casu, quem Deus procul avertere velit, *defectus* utriusque

When, therefore, in 1848, Lord Palmerston told the duly authorized Hungarian envoy,—who happened to be the distinguished Historian, Ladislaus Szalay,—that any communication which he had to make must be made through the Austrian Ambassador, he not only committed a political blunder of the first magnitude, which will reflect for ever on his Statesmanship, but he made a very ridiculous historical mistake,

sexus Archiducum Austriæ, præprimis quidem ab altefato nostro avo Carolo VI°, dein in hujus defectu a divo olim Josepho I°, his quoque deficientibus, ex lumbis divi olim Leopoldi I¹ Imperatorum et Regum Hungariæ descendentium juxta etiam dictamen præcitatorum primi et secundi articulorum præfatæ diætæ anni 1723, *prærogativa regiæ electionis*, coronationisque, antefatorum, Statuum et Ordinum, in pristinum vigorem statumque redibit, et penes hoc Regnum Hungariæ, et prædictas partes, eiusdemque antiquam consuetudinem illibate remanebit.

" *Quinto.* Ut præmissum est, toties, quoties eiusmodi inauguratio Regia intra ambitum sæpefati Regni Hungariæ, successivis temporibus diætaliter instauranda erit, toties hæredes et successores Nostri futuri neo-coronandi hæreditarii Reges, *præmittendam* habebunt præsentis diplomaticæ assecurationis acceptationem, deponendumque superinde *juramentum*."

The last three are from the *Diploma præmittendum* itself of Leopold II. Ferdinand V. swore to the same.

" Ad penitus e medio tollendum omne dubium, quod ex tenore quorundam verborum acceptati a Sacratissima Regia Majestate, et extradati diplomatis inauguralis de coronatione per hæreditarios Hungariæ Reges suscipienda contra fundamentales regni leges obmotum est, futurisve temporibus obmoveri posset, clementer annuit Cæsareo Regia Apostolica Majestas, ut inauguratio coronatioque Regia, *cum singula regiminis mutatione*, intra sex mensium a die *obitus* DEFUNCTI regis computandum spatium, *ritu legali inomisse suscipiatur*, salvis tamen intermedio tempore omnibus juribus hæreditariis Regis, quæ ad publicam, constitutionique conformem regni administrationem pertinent, salvis non minus eidem Regi debitis homagialis fidei obligationibus, *privilegiorum nihilominus collatione* imposterum quoque *penes solam legitime coronatum* regiam Majestatem permansura. (Article III. of Diet of 1790.)

" Leges ferendi, abrogandi, interpretandi potestatem in Regno hoc Hungariæ, partibusque annexis, salva art. 8, 1741, dispositione *legitime coronato* Principi et Statibus et Ordinibus regni ad comitia legitime confluentibus, communem esse, *nec extra illa exerceri posse*, Sua Majestas Sacratissima ultro ac sponte agnoscit, ac se jus hoc Statuum illibatum conservaturam, atque prout illud a divis suis Majoribus acceperat, ita etiam ad Augustos suos Successores *inviolatum* transmissuram benigne declaravit, Status et Ordines securos reddens, *nunquam* per edicta seu sic dictas patentales, quæ alioquin in nullis unquam

which will compel all impartial men to think but very little of his personal accomplishments.*

judiciis regni acceptari possunt, regnum, et partes adnexas gubernandas fore, expeditione patentalium ad illum duntaxat casum reservata, ubi in rebus, legi alioquin conformibus, publicatio debito cum effectu hac unica ratione obtineri valeret. Proinde,

"Forma judiciorum lege stabilita aut stabilienda, authoritate regia non immutabitur, nec legitimarum sententiarum executiones mandatis impedientur aut per alios impediri admittentur, nec sententiæ legitimæ fororum judiciariorum alterabuntur, imo nec in revisionem Regiam, nec ullius Dicasterii politici pertrahentur, sed secundum conditas hucusque, aut in futurum condendas leges, receptam regni consuetudinem, judicia per judices absque discrimine religionis deligendos celebrabuntur, *executiva autem potestas nonnisi in sensu legum* per Regiam Majestatem exercebitur. (Article XII. of Diet of 1790.)

"*Singulo triennio*, aut publica regni utilitate, et necessitate exigente *etiam citius*, ad exigentiam sancitarum superinde Regni legum, signanter 1655: art. 4, 1715: art. 14, 1723: artic. 7 hic loci renovatorum, per Majestatem Regiam generalis Regni Diæta indicetur: ad quam Status et Ordines citra omne ponendum impedimentum compariturі, diætaliaque negotia legali cum libertate pertractaturi sunt. Ut autem pertractatis debite propositionibus regiis, cuncta justa gravamina universorum Statuum et Ordinum Regni in qualibet diæta effective, et inomisse tollantur, legesque in singula diæta condendæ exacte effectuentur, et effectuari procurentur, Majestas Regia futuris quibusvis temporibus, vi muneris sui Regii curatura est. (Article XIII. of Diet of 1790.)

"Erga demissam Statuum et Ordinum regni propositionem, Sua quoque Majestas Sacratissima benigne agnoscere dignata est, quod licet successio sexus fœminei Augustæ Domus Austriacæ per articulos 1 et 2, 1723, in Regno Hungariæ partibusque eidem adnexis stabilita, eundem quem in reliquis Regnis et ditionibus hæreditariis in et extra Germaniam sitis, JUXTA STABILITUM SUCCESSIONIS ORDINEM inseparabiliter ac indivisibiliter possidendis, Principem concernat: *Hungaria nihilominus* cum partibus adnexis sit *Regnum* liberum et relate ad totam legalem regiminis formam (huc intellectis quibus vis dicasteriis suis), *independens, id est nulli altero regno aut populo obnoxium, sed propriam habens consistentiam et constitutionem*, proinde *a legitime coronato* hæreditario Rege suo, adeoque etiam a sua Majestate Sacratissima, successoribusque eius Hungariæ Regibus, propriis legibus et consuetudinibus, *non vero ad normam aliarum provinciarum* dictantibus id articulis 3, 1715, item 8 et 11, 1741, regendum et gubernandum." (Article X. of Diet of 1790.)

* The following is the *litera scripta* from which Lord Palmerston cannot escape:—

"LORD EDDISBURY TO LADISLAUS SZALAY.

"*Foreign Office, Dec. 13th*, 1848.

"I am directed by Viscount Palmerston to acknowledge the receipt of your

When Ferdinand V., King of Hungary, was crowned, having already given, on the 25th of September, 1830, his solemn Diploma as already mentioned, he swore "by the Living God, and by His most Holy Mother, the blessed Virgin Mary, and by all the Saints, that We will preserve and maintain God's Church, the Prelates, Barons, Magnates, Nobles, Free Cities, and all other inhabitants, in all their immunities and liberties, rights, laws, and privileges, according to the old, good, and time-tried customs, and that we will do Justice to them all."*

Ferdinand the Fifth was a well-meaning man, but easily led away by those more artful. He thus allowed himself to put his name to many unlawful things, of which it is only necessary for me now to allude to the Decree of 3rd of October, 1848.† But when those about him sought to make him go

letter of the 11th inst.; and, in reply, I am to say that Viscount Palmerston is sorry he cannot receive you. *The British Government has no knowledge of Hungary, except as one of the component parts of the Austrian Empire;* and any communication which you have to make to her Majesty's Government, in regard to the commercial intercourse between Great Britain and Hungary, should therefore be made through Baron Koller, the representative of the Emperor of Austria at this Court."

I wish that the space of such a publication as the present allowed me to give some more of the correspondence on this subject.

* The original is as follows:—

"Nos Ferdinandus, Dei Gratia Rex Hungariæ, etc., juramus per Deum vivum, per ejus Sanctissimam Genitricem Virginem Mariam, ac omnes Sanctos, quod Ecclesias Dei, Dominos, Prelatos, Barones, Magnates, Nobiles, Civitates liberas, et omnes regnicolas in suis immunitatibus ac libertatibus, juribus, legibus, privilegiis, ac in antiquis bonis, et approbatis consuetudinibus conservabimus, omnibusque justitiam faciemus; Serenissimi condam Andreæ Regis Decreta (exclusa tamen, et semota, articuli 31 eiusdem decreti clausula, incipiente, 'quodsi vero nos,' etc., usque ad verba: 'in perpetuum facultatem') observabimus; fines Regni Nostri Hungariæ, et quæ ad illud quocunque jure aut titulo pertinent, non alienabimus, nec minuemus, sed quoad poterimus augebimus, et extendemus; omniaque illa faciemus, quæcunque pro bono publico, honore et incremento omnium Statuum, ac totius regni Nostri Hungariæ juste facere poterimus. Sic nos Deus adjuvet et omnes Sancti."

† See this, at full length, in "Parallels between England and Hungary," pp. 84, 85.

further, his kingly oath rose up before his conscience. "But my oath! my oath!" was his exclamation. That a royal Hapsburg should be troubled about his oath, seemed so ridiculous, that those about him forthwith told the world that Ferdinand was an idiot; and they forced him to abdicate. They then set up the young man Francis Joseph as "Emperor of Austria" in his place,—well assured that the education of this young man had been so well attended to, that there was no danger of his being troubled in conscience about oaths. I may remind your Lordship, that the parties to this creditable transaction were, the Archduchess Sophia, Prince Windischgrätz, Prince Schwartzenberg, and the Ban Jellachich.

Francis Joseph is not even the next heir of Ferdinand V. The next heir was passed over. I have to add, that Ferdinand V. is still alive, and is, at this moment, the only lawfully crowned King of Hungary; that his abdication was never presented to the Hungarian Diet, nor has any action ever been taken upon it by the States of Hungary: that Francis Joseph, now calling himself "King of Hungary," has never been acknowledged by the Diet,—has never given the Diploma which I have shown to be the essential preliminary to Coronation,—and has never, in fact, been crowned. He has neither the *inchoate right* to be "King of Hungary," nor is he *actual* "King of Hungary." He cannot therefore claim any of the prerogatives that belong to the King of Hungary "as such." The right to deal with the Crown of Hungary has clearly reverted,—according to the fundamental law of Hungary, sworn to by every one of her Kings of the Hapsburg race,—to the States of the Nation.

I have shown that Francis Joseph of Austria is not King of Hungary. Your Lordship may, in your nervous anxiety to serve the interests of the illustrious House of Hapsburg-Lorraine, say that the Law of Hungary hereon is not a Law of which English Courts can take judicial notice. I admit this, so far as the facts are not (which, however, most of them are) matters of notoriety in the History of Europe. But this only places your Lordship in a still greater difficulty than

before. A man who has, for more than eleven years, been unblushingly acting the Usurper, cannot now be let coolly set up this sudden claim to Kingship. He must remember that the *Emperor* Joseph II., the son of Maria Theresa herself, was never acknowledged as King by Hungary, nor does his name appear in a single Statute of the Hungarian *Corpus Juris*. Francis Joseph must show that he is King according to the Laws of Hungary; or else he must submit to have the case adjudged simply in accordance with English Law.

I have shown that, according to Hungarian Law, Francis Joseph of Austria has not the shadow of a pretence for calling himself "King of Hungary." I will now demonstrate, by authorities that your Lordship will not venture for a moment to question, that, according to the thoroughly settled Law of England, he cannot be King of Hungary, and cannot be treated as such by any Court of Law in England.

Your Lordship is aware that, by the Law of England, it is expressly declared to be *High Treason* even to affirm that the descent and limitation of the Crown do not depend wholly upon Parliament.

Circumstances have twice occurred, in modern English History, which have made it necessary that the Law of England should be yet further declared with precision and clearness upon this very subject. Upon the declarations of the Law thus made, the present occupancy of the Throne of England, and the condition of many other parts of our Laws, entirely depend. The English Government, and every Court of Law in England, are alike bound to take notice of this state of the Law in England.

Your Lordship will remember that, on the 28th January, 1688 [9], the House of Commons passed a Resolution, that James II. had "*abdicated* the Government, and that the throne is *thereby become vacant*." You will further remember that this Resolution grated on the ears of the House of Lords; and that their Lordships begged the Commons to alter "abdicated" into "*deserted*," and to leave out the words declaring that "the throne is thereby become vacant." Thereupon a

free conference was held between the Houses. The arguments then used apply exactly in the present case. There had not been indeed, in that case, as there has been in this, an express abdication; but it is still stronger to the point, that the Acts of the Crown were taken to import, in themselves, an abdication; and the *vacancy* of the throne, and *that it could not be filled by the next heir*, were insisted on. Both these were finally adjudged to be the Law, by both Houses.

The Acts of the last days of Ferdinand V. (especially the Decree of 3rd Oct. 1848) surpass anything that was done by James II. As to Francis Joseph, had he ever been King of Hungary, the same remark and result would apply. I quote a few passages only, from names which will be as familiar to your Lordship as household words, in order to refresh your Lordship's memory upon these important declarations of the Law of England. But I beg that it may be distinctly understood, that I could quote page after page to the same effect, and only varying the point of view taken to give strength to the argument.

"King James the Second," said Mr. Somers, "by going about to subvert the Constitution, and by breaking the Original Contract between King and People, and by violating the fundamental Laws, and withdrawing himself out of the Kingdom, hath thereby renounced to be a King according to that Constitution. By avowing to govern by a despotic power unknown to the Constitution, and inconsistent with it, he hath renounced to be a King according to the Law,—such a King as he swore to be at his Coronation,—such a King to whom the Allegiance of an English Subject is due; and hath *set up another kind of Dominion;* which is to all intents an *Abdication or abandoning of his legal Title,* as fully as if it had been done by express Words."

"It is," said Sir George Treby, "because the King hath thus *violated the Constitution,* by which the Law stands, as the Rule both of the King's Government and the People's Obedience, *that we say, he hath abdicated and renounced the Government.* For all other particular breaches of the law, the Sub-

ject may have Remedy in the ordinary Courts of Justice, or the extraordinary Court of Parliamentary Proceedings. But where such an attempt as this is made on the Essence of the Constitution, it is not we that have brought ourselves into this State of Nature, but those who have reduced our legal well-established Frame of Government into such a State of Confusion, as we are now seeking a Redress unto."

And what said that fine old English Lawyer, Serjeant Maynard?—"It is by our law an Hereditary Monarchy. I grant it; but though it should, in an ordinary way, descend to the Heir, yet, as our case is, we have a Maxim in Law, as certain as any other, which stops the course; for no Man can pretend to be King James's heir while he is living: *Nemo est hæres viventis.*" In the same way, the Hungarian Law only recognizes the heir "*defuncti* regis."

Your Lordship is well aware that our present "happy settlement" rests, exclusively, on the recognition of the Law thus clearly laid down.

A hundred years later, another great occasion arose, in which it was necessary that the Law of England should be declared as to the power and rights of Parliament in the case of a vacancy in what may be called the Crown-power. This case also applies, with singular aptness, to the position of Ferdinand V. It is not possible for it to be maintained, in England, after these two great declarations of the Law, that any other power or authority, except that of the States of the Realm, can, in a Constitutional Kingdom, give any claim to the Crown, or to the exercise of royal prerogatives and powers, under such circumstances as those in which Francis Joseph finds himself.

When, in 1788, King George III. was incapacitated, the question arose, what should be done? Unwise friends of the Prince Regent pretended (very inconsistently with their usual professions) that the Prince had a "right" to the exercise of the functions of the Crown. The debates were long, and their importance was fully felt, both in Parliament and out of it. "To assert," said Mr. Pitt, in his place in Parliament, "to

assert such a right in the Prince of Wales, or any one else, *independent of the decision of the two Houses of Parliament*, is little less than Treason to the Constitution of the country." Again :—" It is subversive of the principles of the Constitution, to admit that the Prince of Wales might seat himself on the throne during the lifetime of his father; and the intimation of the existence of such a right, presents a question of greater magnitude and importance, even than the present exigency and the provision that it necessarily requires; a question that involves in it the principles of the Constitution, the protection and security of our liberties, and the safety of the State. . . . It is our first duty to decide whether there be any right in the Prince of Wales to claim the exercise of the regal power, under any circumstances of the country, independent of the actual demise of the Crown." And after long and able debates, in both Houses, it was resolved, by both Houses, "That it is the *Right* and Duty of the Lords Spiritual and Temporal, and Commons, of Great Britain, now assembled, and lawfully, fully, and freely representing all the Estates of the people of this realm, to provide the means of supplying the defect of the personal exercise of the Royal authority."

Nothing can be more explicit than the whole transaction, or more important and definitive than the clear declaration of the Law applicable on such occasions. And Mr. Pitt well deserved the thanks that were voted to him, your Lordship will remember, by the Corporation of London and every town of any importance in the kingdom, for his "strenuous support of the important Rights of the Lords and Commons of this Realm."

The Law of England as to the claim to the throne, and to the exercise of Royal authority, under circumstances parallel to those in which Hungary now stands, is thus clear and indisputable. Francis Joseph has never been accepted as King of Hungary by the only authority which, both by its own Laws and by the Law of England, can make his title to be king even a possible contingency. Therefore his claim, as Plaintiff in this suit, falls necessarily to the ground. The only way in

which he could now, by possibility, establish a claim to be king, would be, by the Diet's meeting in the most full and solemn manner (though the Summons, as in the case of our William III., must necessarily be to a Convention only), and consenting to wipe out the memory of twelve years of usurpation and crime, and inviting Francis Joseph to be King, and accepting from him the Diploma and the Coronation Oath which his forerunners, Kings of Hungary, have given and taken. In no other possible manner, can the Plaintiff in this suit ever come into Court with any standing-ground whatever; and nothing less than this can make it even excusable, much less justifiable, for an English Court of Law, or for an English Government, to recognize this pretence, now suddenly set up, to be "King of Hungary," and "as such" to invoke the authority of the State of England to put its hand upon any man who is living within the shelter of England.

Your Lordship must be well aware that there are many other points which I could take up, and enlarge upon in relation to this subject: but I purposely forbear to do more than fix attention upon the facts and the Law as they arise upon the face of this Bill, so strangely and suddenly filed in Chancery, after Her Majesty's Government had taken twenty days to consider whether they could help the behests of Austria.

The Austrian Emperor wants to get an *English Court of Law* to affirm, before the world, that USURPATION,—and this Usurpation itself maintained only by *borrowed* bayonets: for Hungary defeated Austria in the field, until Russia intervened with arms,—shall be held to be above Constitutional Right, and the inherited Liberties of Nations, and the letter of even express and sworn-to Law; and that to the first, and not to these last, English Courts will do obeisance; and that of this first they will become the willing instruments within the shores of England.

Shall the Courts of Law in England be thus prostituted? and shall the name and honour of England—nay, the very basis on which her own Crown and Institutions at this moment rest—be thus trailed in the dirt before a watching world,

to gratify an Emperor-Plaintiff of the perjured House of Hapsburg-Lorraine?

The believers in the traditions of a feeble diplomacy, may delight to maunder about trying to prop up the tottering State of Austria, and may not hesitate, for this purpose, to set good faith, consistency, and the Laws of Nations and of England at naught. But such a feeble policy will be a failure, my Lord. In the grateful heart of the independent Nation of Hungary, England would have an invaluable friend, and Europe a much-needed counterpoise. In that "unnatural union of disjointed things" which diplomatists call *Austria*, England has no friend, and Europe has no strength. Think you, my Lord, that the despatches between yourself and Sir James Hudson, —to and from,—which passed in last September, and which are *not* to be found in the Blue-books, would redound to your Lordship's honour, or to the credit of the present Government of England, if they were published? Your Lordship will understand my allusion, and well knows what the only answer can be.

Your Lordship has professed to sympathize much with Italy, a country which has let herself be trampled on for ages, and has at length risen, by means of foreign aid, and turned upon her oppressors, and shown herself worthy to be free. But Hungary is a country whose own sons have always, through many changeful centuries, known how to maintain their free Institutions, though surrounded with difficulties of the most dangerous and complicated kind. And at this moment, Hungary gives to the world the marvellous spectacle of having, by her self-reliance and firmness, compelled one who has been, for eleven years, a mere Usurper, to sue to her for acceptance as "King." By her unswerving and dignified insistance upon her Laws and Constitution, under trials the most terrible, she has shown herself thoroughly worthy of the liberties she has inherited, and that she is able to maintain her own against all that oppression and perfidy can do.

Let England sympathize with Italy: but let not this sympathy be proved to be mere cant and hypocrisy, by the English

Government being let follow the traditions of a feeble and worn-out diplomacy, and being let, in defiance of oft-repeated and fulsome professions, lend itself to the behests of Austria when she seeks to crush the liberties of a Nation, and to stop the free action of the best Men of a nation, that are at least as worthy of the admiration and support of every lover of Constitutional Freedom, as are any Nation or Men that have ever struggled for their independence or their liberties.

I have the honour to be, my Lord,

Your Lordship's obedient Servant,

TOULMIN SMITH.

Highgate: Middlesex,
5th March, 1861.

To the Right Hon. Lord John Russell, M.P.,
Her Majesty's Principal Secretary of State for Foreign Affairs.

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